

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN BEGGS and JOANNE BEGGS,

Plaintiffs-Appellants,

v

DISCOUNT JEWELRY CENTERS, INC.,

Defendant-Appellee.

UNPUBLISHED

January 31, 2006

No. 256653

Wayne Circuit Court

LC No. 03-332049-NO

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff Stephen Beggs¹ alleged that while he was a business invitee on defendant's premises, he was injured "when a stool or chair provided for his use as a customer in the Defendant's jewelry store collapsed, suddenly and without warning." Plaintiffs' complaint alleged a single cause of action styled as "Breach of Implied Warranty." Plaintiffs rely on *Jones v Keetch*, 388 Mich 164; 200 NW2d 164 (1972), arguing that a breach of implied warranty claim is actionable in the context of a bailment. The trial court granted defendant's motion for summary disposition, agreeing with defendant that no bailment relationship was created.

II. STANDARD OF REVIEW

This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

¹ This opinion uses the singular plaintiff to refer to Stephen Beggs. The loss of consortium claim raised by Joanne Beggs is derivative in nature.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5). [*Id.* at 119-120 (citations omitted).]

III. ANALYSIS

The nature of a bailment is described in *Orton v Markward & Karafilis, Inc.*, 83 Mich App 548, 551; 269 NW2d 219 (1978), as follows:

A bailment requires the delivery of personal property in trust. *In re George L Nadell & Co, Inc.*, 294 Mich 150, 154; 292 NW 684 (1940). In order to constitute a sufficient delivery of the subject of the bailment, there must be a full transfer to the bailee so as to exclude the possession of the owner and all other persons and to give to the bailee the sole custody and control thereof. 8 Am Jur 2d, Bailments, § 56, p 961. As a general rule, the creation of a bailment requires the possession and control over the subject matter pass from the bailor to the bailee. 8 Am Jur 2d, Bailments, § 54, p 960.

In this case, the factual allegations in plaintiffs’ complaint, accepted as true and construed in the light most favorable to plaintiffs, fail to show that a bailment relationship existed. The complaint alleges that defendant provided the chair or stool for plaintiff’s use as a customer in the store. Viewed in the light most favorable to plaintiffs, the allegations indicate that defendant did not relinquish possession and control of the chair or stool. Unlike the cases cited by plaintiffs in which a bailment was sufficiently established, there was no “full transfer” to plaintiff in this case.

Plaintiffs rely on the existence of a bailment relationship to support their implied warranty claim, and the allegations show that no factual development will justify recovery on this theory, therefore, the trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette